



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201334044**
Release Date: 8/23/2013

Date: May 29, 2013

UIL Code: 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Additionally, in response to your request, we granted you an additional two weeks to file a protest. Since we did not receive a protest within the requisite 30 days or the extended period, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: March 14, 2013

UIL Code: 501.33-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

<u>Corporation</u>	=
<u>State</u>	=
<u>Date 1</u>	=
<u>Date 2</u>	=
<u>Date 3</u>	=
<u>Hospital</u>	=
<u>City</u>	=
<u>State Taxing Authority</u>	=
<u>Newspaper</u>	=

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code ("Code") section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Facts

You filed your Articles of Incorporation (the "Articles") under the nonprofit corporation laws of State on Date 1. Your Articles state that you are organized exclusively for § 501(c)(3) purposes. Your specific purposes are, "[t]o own and operate a general hospital or hospitals, to operate said hospital or hospitals exclusively for charitable, scientific or educational purposes as set forth under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended".

Your Bylaws provide that your primary purpose "shall be operation of Hospital in City, which shall also be the principal place of business." In your narrative description, you stated you have "been formed to provide relief to the poor, distressed and underprivileged." You stated "[we] developed one (1) program in furtherance of our purpose...we further our purpose under this

program by owning and operating a Rural General Acute Care Hospital with a Critical Access designation for hospitals." You intended to purchase and operate Hospital.

You indicated you have opened escrow to purchase Hospital and signed a purchase agreement. Specifically, you stated, "we signed a purchase agreement on Date 2 and opened escrow to purchase Hospital, located in City. Escrow is scheduled to close on or before Date 3." You did not provide a copy of this purchase agreement or any support for an agreement to close on or before Date 3. You state "Corporation currently doesn't own a hospital. We are trying to purchase the city owned hospital in City. The hospital is built on city owned land and BLM land. In order for the City of City to convey title of the BLM land to the purchaser, the purchaser has to be a nonprofit 501(c)(3) tax exempt corporation." Enclosed in our letter to you was a news article from the website for Newspaper. The article stated generally that the arrangement for Corporation to purchase Hospital will no longer occur. The article also stated that City is communicating with an alternate party to purchase Hospital. When asked whether acquisition of the hospital is still possible and how your future plans have changed for acquiring and operating a hospital or other operations you stated, you replied, "[t]he hospital currently hasn't been sold. When Corporation receives its funding and the BLM (Bureau of Land Management) certificate of Approval, Corporation will submit its Asset Purchase Agreement to the Board of Hospital Trustees and the City Council of the City for their approval of the purchase agreement." There is no statement as to where you will receive your funding to purchase the hospital.

There are no documents in your application or your responses to our requests for more information that show your current activities. When asked to provide your website you stated that "Corporation still doesn't have a website." You were also asked to provide any proposed recruitment incentive policies and any other incentives offered to physicians. You indicated that "[o]nce all definitive agreements are executed by Corporation and the City of City, Corporation's Board of directors will immediately meet with the Hospital Administration and retain a healthcare attorney firm, to craft and approve a Physician recruitment policy for the hospital administration to follow." You were asked to explain the role your Board has in setting recruitment incentive policies and what steps your board will take to ensure such recruiting practices are consistent with your exempt purposes." You stated, "Corporation does not have any proposed recruitment incentive policy. The governing board will decide its recruitment incentive policy after Corporation retains a healthcare attorney." Then you state "[o]ther recruitment incentives could be: (a) percentage of student loan repayment, (b) a percentage of relocation expenses and possibly some sort of medical directorship for services rendered. Before any incentive policies are adopted the governing board would be advised from its health care attorney." None of the proposed policies are accompanied by resolutions or minutes from meetings of your Board.

You provided a proposed policy for determining salaries of employees, a Financial Assistance Plan, treatment of patients without apparent ability to pay, implementation of the Community Health Needs Assessment, and provision of charity care.

Law

Section 501(c)(3) of the Code describes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to be exempt as an organization described in § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In evaluating whether a nonprofit hospital qualifies as an organization described in § 501(c)(3) of the Code, Rev. Rul. 69-545, 1969-2 C. B. 117, compares two hospitals. The first hospital discussed is controlled by a board of trustees composed of independent civic leaders. In addition, the hospital maintains an open medical staff, with privileges available to all qualified physicians; it operates a full-time emergency room open to all regardless of ability to pay; and it otherwise admits all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare). In contrast, the second hospital is controlled by physicians who have a substantial economic interest in the hospital. This hospital restricts the number of physicians admitted to the medical staff, enters into favorable rental agreements with the individuals who control the hospital, and limits emergency room and hospital admission substantially to the patients of the physicians who control the hospital. Rev. Rul. 69-545 notes that in considering whether a nonprofit hospital is operated to serve a private interest, the Service will weigh all the relevant facts and circumstances in each case, including the use and control of the hospital. The revenue ruling concludes that the first hospital continues to qualify as an organization described in § 501(c)(3) of the Code and the second hospital does not because it is operated for the private benefit of the physicians who control the hospital.

Rev. Rul. 83-157, 1983-2 C.B. 94, held that a nonprofit hospital identical to the hospital in Rev. Rul. 69-545, except it did not operate an emergency room, can still qualify under § 501(c)(3) of the Code if other significant factors establish that it operates exclusively to benefit the community as a whole.

Rev. Proc. 2013-9, 2013-2 I.R.B. 255, section 4.03, states that exempt status may be recognized in advance of an organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Internal Revenue Service (the "Service") that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that a trade association did not qualify for exemption, because it had an "underlying commercial motive" that distinguished its educational program from the type provided by a university. In so holding, the Court ruled that the presence of a single non-exempt purpose, if substantial in nature, destroys an organization's basis for tax exemption, regardless of the number or importance of that organization's truly exempt purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court found that the actual purposes displayed in the administrative record supported the conclusion of the IRS. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant."

The applicant for tax exempt status under § 501(c)(3) of the Code has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of § 501(c)(3) of the Code. Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), the Tax Court stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of § 501(c)(3)."

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). Petitioner provided only generalizations in response to repeated requests by respondent for more detail on prospective activities. Such generalizations did not satisfy the court that petitioner qualifies for the exemption.

Analysis

You have not met your burden of proof that you are formed to serve a purpose as described in § 501(c)(3) of the Code. To qualify for exemption as an organization described in § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Section 1.501(c)(3)-1(a)(1) of the Regulations. Exemption

from federal income taxation is not a right, it is a matter of legislative grace that is strictly construed. New Dynamics, 70 Fed. Cl. 782. The burden is on the applicant to prove that it is entitled to exempt status. Id. An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests. Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. According to your articles of incorporation, you organized to own and operate a hospital. You do not own or operate a hospital. You have not provided any documentation of current activities that allow a conclusion that you are operated for any exempt purpose.

You have the burden of providing sufficient documentation or other substantive information regarding your activities and operations which would establish entitlement to tax exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under § 501(c)(3) of the Code. Exempt status may be denied based solely on the applicant's failure to describe in adequate detail how it will satisfy the operational test. An application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws." Bubbling Well, 74 T.C. at 535. As the court stated in New Dynamics Foundation, "[i]t is well-accepted that, in initial qualification cases . . . , gaps in the administrative record are resolved against the applicant. . . . [and] inferences [can be drawn that are] adverse to a taxpayer seeking exempt status." 70 Fed. Cl. at 802. If this was not the case, the result "would be to encourage [taxpayers] to play a tight-lipped form of 'cat and mouse' with [the Service's] information requests." Id. When asked to provide a website, you responded that you don't have one yet. When asked for your recruitment incentive policies, you replied that you don't have them yet, but after purchase of Hospital, you will hire a healthcare attorney and then submit policies to your Board of Directors.

Rev. Rul. 69-545, supra, notes that in considering whether a nonprofit hospital is operated to serve a private interest, the Service will weigh all the relevant facts and circumstances in each case and this burden requires an applicant seeking exempt status to provide sufficient information to make an informed decision. The application must include details, figures, and documentation to support the informed decision. See Basic Bible Church, 74 T.C. 846. You stated that your only purpose will be to own and operate Hospital. When presented with a statement from Newspaper that you will be unable to purchase Hospital, you replied "when Corporation receives its funding and the BLM Certificate of Approval, Corporation will submit its asset Purchase Agreement to the Board of Hospital Trustees and the City Council of the City of City for their approval of the purchase agreement." You neither provided a description of how you would obtain funding, nor denied that you would be unable to purchase Hospital. The information you provided in your application and letters do not provide enough facts and circumstances to make an informed decision about your ability to achieve funding to purchase Hospital. The mere prospect or desire to purchase Hospital does not meet the burden required. The facts and circumstances do not support a reasonable conclusion that you will own or operate Hospital. If you do not own or operate a hospital, you cannot fulfill your "one (1) program in furtherance of [your] purpose."

Rev. Rul. 83-157, supra, provides that a hospital lacking a common element of an exempt hospital, in that case one that was lacking an emergency room, can still qualify under § 501(c)(3) if other significant factors establish that it operates exclusively to benefit the community as a whole. You indicated you are "dedicated" to providing care to the "poor, distressed, and underprivileged." Any community benefit provided to the "poor, distressed, and

underprivileged" is entirely contingent on your owning and operating Hospital. You indicated that you had entered escrow and signed a purchase agreement. You did not provide a copy of the purchase agreement or documents supporting the transaction and you did not explain why the transaction did not occur by the purported deadline. "If such disclosure is not made, the logical reference is that the facts, if disclosed, would show that [the Applicant] fails to meet the requirements of § 501(c)(3)." Bubbling Well Church of Universal Love, 74 T.C. at 535. The absence of a clear plan to achieve funding, to purchase Hospital, or an explanation why the previous purchase was unsuccessful, demonstrates a lack of sufficient detail to permit a conclusion that your organization will clearly meet its requirements for exemption.

An organization is operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in § 501(c)(3) of the Code, and if not more than an insubstantial part of its activities furthers a non-exempt purpose. See Better Business Bureau, 326 U.S. at 283. You have provided a statement of your exempt purpose and that you will adopt employee recruitment policies, Community Health Needs Assessments, Financial Assistance Plans, and charity care plans; however, you also stated that you will only do so after you have purchased Hospital and hired a healthcare attorney. These are prospective policies for which you have not provided any indication of implementation; such as a resolution or minutes from meetings of the Board of Directors.

Although you provide that you plan to satisfy the requirements of exemption after you have purchased the hospital and have hired an attorney, you have failed to provide details that you will operate to fulfill a charitable purpose as described in § 501(c)(3) of the Code. Rev. Proc. 2013-9, supra, does provide that you can be granted exempt status in advance of operations, but you must provide information that satisfies the inquiries that lead to a conclusion that you will be able to perform your exempt purposes. Instead you have provided a contingent purpose and community benefit but have only made general statements as to how you will achieve this purpose or benefit. You stated that you will purchase and operate a hospital, but have not provided how you will achieve funding to do so. "Such generalizations do not satisfy us that [applicant] qualifies for the exemption." Peoples Prize, 87 T.C.M. 813. A mere statement that your activities will be in furtherance of your exempt purposes is insufficient. The burden is on the applicant to establish that it is operated to serve one or more exempt purposes. Harding Hospital, Inc. 505 F2d at 1071, and § 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Rev. Proc. 2013-9, supra, specifically states:

The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Internal Revenue Service (the "Service") that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

You have not established a factual basis for your exemption and have not demonstrated that you have met the burden of proof that you are exclusively operated for tax exempt purposes under § 501(c)(3) of the Code.

Conclusion

You have not met your burden of proving that you qualify for tax exempt status. Therefore, it is our conclusion that you have not established that you are operated exclusively for exempt purposes within the meaning of §501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T:4 (NCA-534-11)
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements